

REMARKS

I. Status of the Claims

Claims 1-6, 9, 13, 14, 20, 21, and 23-31 are pending. Claims 1 and 23 are in independent form. Claims 1, 9 and 23 have been amended and Claims 7, 8, 10-12, 15-19, and 22 have been cancelled. Claims 26-31 are new claims. No new matter has been added, and support for each of the amendments is found in the original specification and claims. Reconsideration of the outstanding rejections is respectfully requested in view of the foregoing amendments and in light of these remarks.

II. Summary of the Claimed Subject Matter

According to the present invention, a packaging is provided comprising a film having a precut line, with the advantage that the item within may be accessed swiftly and simply by the consumer, while at the same time being appropriately protected (page 1, lines 12 to 20). The item is packaged so that a consumer can trap an amount of gas in the area near the precut line, such that bending the item causes the precut line to rupture instantaneously, which is accompanied by a characteristic snapping or popping sound. (page 1, line 21 to page 2, line 4). As amended, each of the independent claims recites the structure of the precut line, which has a polypropylene outer layer having the precut line extending through it, and a polyethylene inner layer through which the precut line does not extend. This subject matter was previously recited in Claims 7 and 10 through 12, which have been canceled. Claim 23 is directed to a preferred configuration of the item, and dependent claims have been added similar in scope to certain claims depending from Claim 1.

III. Rejection Under 35 U.S.C. § 112, First Paragraph

Claims 1-7, 9-14, 17-18, 20-21 and 23-25 have been rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the Office Action says that “[t]he application does not appear to disclose ‘bursting’”.

Applicants respectfully traverse. The last paragraph of the application specifically recites that the packaging is designed to enclose an amount of gas so that it opens by bursting:

It is not necessary for the enclosure prior to opening to be completely impervious in respect to the gas. All that is required is that this imperviousness should allow the film to be tensioned by local compression with a view to opening it by bursting.

(Office Action, page 11, lines 4 to 7, emphasis added).

Moreover, when the package opens by bursting, it makes a characteristic noise, which is also set forth in the specification, as follows: “It [the opening] also produces an attractive characteristic noise of the explosion type, due to the sudden release of gas. (Page 2, lines 1 to 3, emphasis added).¹ Moreover, this feature (the snapping sound that the package makes upon opening) was demonstrated in an interview with the Examiner conducted on April 6, 2005.

Applicants respectfully submit that the language of the amended claims is supported by the text of the application as filed, that the bursting feature of the packaging has been a central element of the claimed invention, present in the description when the

¹ “Explosion” and “bursting” both translate the underlying French word “éclatement”.

international application was filed, and that the rejection for an alleged lack of an adequate written description should be withdrawn.

IV. Rejections Over The Prior Art

Claims 1-2, 4-7, 9, 11, 13, 17, 20, 21, and 23-25 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 4,658,963 (Jud).

Claims 1-4, 7, 11-14, 17, 20, and 23 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 4,290,526 (Haiss), and Claims 1-2 and 17 have been rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by WO 98/45127 (Martel). Applicants submit that these rejections are moot in view of the incorporation of the subject matter of Claim 10 into the independent claims.

Claims 1-4, 7, 9-13, 15-20 and 22 have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 5,934,809 (Marbler). Applicants respectfully traverse

V. Argument

Marbler does not disclose a packaging film having a layer of polypropylene defining an outer face and a precut line extending in the polypropylene layer in a region where the polypropylene layer defines the outer face of the item, as required in both present independent claims. To the contrary, Marbler is directed to a film forming mass which is applied over a region of weakness in a film (col. 2, lines 45-46). The film forming mass “covers over and closes off the previously made weakness” (col. 2, lines 60-61), so that which ever side this mass is formed on, there would not be a precut line on the outer face of the article. Preferably, the film forming mass is situated on the side of the pouch facing outwards (col. 4, lines 5-7). Thus, Marbler does not

disclose or suggest a precut line extending through a polypropylene outer layer as presently claimed.

Marbler also does not specifically disclose an inner polyethylene layer in combination with a polypropylene outer layer. Although Marbler discloses “multilayer plastic laminates employing different plastics” at col. 2, line 18-19, this is in the context of a broad generic disclosure, wherein it says that “Essentially all known flexible packaging materials may be employed. . .” (Marbler, col. 2, lines 1-2). Therefore, it would not have been obvious to select a polyethylene inner layer and a polypropylene outer layer and then place the precut line in the polypropylene layer, because there is no motivation in the cited references to arrive at that specific combination.

Turning to the Examiner’s remarks, it has not ever been alleged by Applicants that the packaging breaks open solely as a result of an increase in gas pressure, like a balloon being squeezed until it pops. The specification, for example at page 7, lines 12 to 26, is clear in this regard. The specification consistently describes (and the claims accurately convey) what it means to “open by bursting”, that a gas pressure is increased in the area where the package is ruptured upon opening, so that the package bursts open along that precut line, accompanied for example by an escape of gas causing the characteristic sound which was demonstrated to the Examiner.

Further, the Examiner, looking at a product sample according to the invention, is led to “suspect that the bending of the item creates the majority of pressure on the packaging” (Office Action). This may be quite true, and in fact the present specification suggests that it is, where it describes the bending of the product creating

“localized stress” in the area of the precut line (see page 7, lines 13 to 19). However, the focus should be on whether the prior art discloses opening by bursting, which it does not.

Further still, in order for Marbler to meet the claim limitation, it must be true that in every case disclosed in the reference, the product may be held so as to tension the film around the precut line, such that bending the item causes the enclosure to open by bursting. This is required by the law regarding inherent disclosure in a reference, which case law was set forth at some length in the last response, and is clearly not the case with respect to the disclosure in Marbler. At the April 6, 2005 interview, a packaging article representative of the Jud reference was shown, and it was clear that an article according to Jud could not be grasped so as to increase the pressure around a weakened line in the packaging. Nevertheless, the Office Action reiterated the same rejection over Jud, based on the alleged inherent feature.

A similar error is made formulating the rejection over Marbler, which shows a preferred embodiment having weakened lines on one end of the packaging (Fig. 5), such that bending the article to open it by bursting while creating tension around the weakened line appears to be impossible (because that whole side of the article would presumably be tensioned). Applicants reiterate that Marbler does not disclose packaging with the inherent feature that it can be held so as to locally increase pressure around a precut line, so that the packaging can be opened by bursting when the item is bent.

Further still, the Examiner continues to focus on the amount of the gas in the package, without any evidence that this information (in some quantitative format) would be a relevant criterion to one of ordinary skill in the art. In the Interview Summary, for the example, the volume of the gas is alleged to be the “key point”, and in

the Office Action it is alleged that the claims do not set forth “information regarding the volume of gas or product” (Office Action page 6), and the clear implication is that the Examiner is looking for a numerical handle for this claim limitation. Applicants submit that the claims provide sufficient information to make an item with the appropriate amount of gas within. Claim 23, for example, sets forth specifically how the article may be held, gives the relative position of the hands, the center region of the article and the precut line, so that it opens by bursting, and this information is sufficient to describe the volume of gas inside the package.

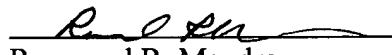
CONCLUSION

Applicants respectfully submit that each of the rejections raised in the December 7, 2004 Office Action has been addressed and that the application is now in condition for allowance.

This Amendment After Final Action is believed clearly to place this application in condition for allowance and, therefore, its entry is believed proper under 37 C.F.R. § 1.116. Accordingly, entry of this Amendment, as an earnest effort to advance prosecution and reduce the number of issues, is respectfully requested. Should the Examiner believe that issues remain outstanding, it is respectfully requested that the Examiner contact Applicants’ undersigned attorney in an effort to resolve such issues and advance the case to issue.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should be directed to our below listed address.

Respectfully submitted,


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